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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh,

First Appeal No.109 of 2004

Udairam Basant

Versus

Smt. Jyoti

JUDGMENT

Post for 18 -06-2007

Sd/-
Dilip RaoSaheb Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 109 of 2004

Before: Hon'ble Shri Justice **Dilip Raosaheb Deshmukh.**

APPELLANT APPLICANT	:	Udairam Basant aged 35 years, S/o Shri Kirtan Basant Forest Ranger, R/o Rampur P.S. Basna, Tah. District Mahasamund C.G. Present address – H.No. L.D.C. 4, New Forest Colony, Jagdalpur, Distt. Bastar C.G.
		Versus
RESPONDENT (Non applicant)	:	Smt. Jyoti, W/o Udairam Basant, aged 30 yrs. D/o Dwarika Raidas, behind Ramjania baba Aikta Chauk, Talapara, Bilaspur, C.G.

First Appeal Under Section 28 of The Hindu Marriage Act, 1955

Present:
Shri Upendra Bharat, counsel for the appellant.
None appears for the respondent.

JUDGMENT
(Delivered on this 18th day of June 2007)

Aggrieved by the dismissal of his application for divorce under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act, 1955) and grant of permanent maintenance @ Rs. 3000/- p.m. to the respondent by the 1st Additional District Judge, Bastar, place at Jagdalpur in Civil Suit No. 24-A of 2002, the appellant-husband has preferred this appeal.

2. It is not disputed that the marriage between the parties was solemnized on 29.04.1993 and they lived together till August 2001. A daughter namely Ku.Rashmi and a son namely Sandeep were born out of

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their wedlock. Admittedly, the respondent-wife is living at her maternal home at Bilaspur since September 2001.

3. The petition on grounds under Section 13(1)(ia) and (ib) of the Act, 1955 was filed by the appellant pleading inter alia that the respondent-wife committed acts of cruelty towards the appellant by repeatedly misbehaving and assaulting him and also deserting the appellant in September 2001 whereafter she left her matrimonial home and started living at maternal home at Bilaspur. It was pleaded that despite several letters and a notice, the respondent-wife did not return to her matrimonial home.

4. Refuting the allegations, the respondent-wife pleaded that the appellant-husband was suffering from Schizophrenia which fact was concealed at the time of marriage. However, despite this, she lived with the appellant at the place of his various postings. The appellant ill-treated her. On 28.08.2001 the appellant pushed her over the *almirah*, due to which, she sustained fracture on left leg. On 2.9.2001 she informed her father who brought her to Bilaspur. The appellant brought her back to the matrimonial home but again dropped her at Bilaspur on 8.9.2001. Thereafter, the appellant never made any effort to bring the respondent back to her matrimonial home. She was at all times willing to live with her husband and children.

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5. The appellant adduced his evidence and examined a witness – Gokul Prasad Basant A.W.2. In rebuttal, the respondent examined herself and one Dwarika Raidas N.A.W.2.

6. During the pendency of the proceedings before the 1st Additional District Judge, an application was made under Section 24 of the Act, 1955 for grant of maintenance *pendente lite*. Vide order dated 20.12.2002, the learned 1st Additional District Judge granted interim maintenance of Rs.4,000/- and also granted Rs.10,000/- towards expenses of proceedings. Aggrieved, the appellant herein preferred Civil Revision No. 21/2003 wherein vide order dated 17.02.2003 the litigation expenses were reduced to Rs.5,000/- and the maintenance *pendente lite* was reduced to Rs.3,000/- per month. The learned 1st Additional District Judge dismissed the petition since grounds under Section 13(1)(ia) and (ib) of the Act, 1955 were not proved. However, without there being any application for grant of permanent maintenance under Section 25 of the Act, it ordered the appellant to pay Rs.3000/- as permanent maintenance to the respondent/wife.

7. Shri Upendra Bharat, learned counsel for the appellant has assailed the impugned judgment and decree while contending that a finding was recorded by the 1st Additional District Judge on issue No.2 that marital relationship between the two spouses had discontinued for about two years which was by itself sufficient to prove the ground of desertion of the appellant by the respondent. Reliance was placed on **G.V.N. Kameswara Rao v. G. Jabilli, (2002) 2 SCC 296** while contending that

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desertion of the husband by the wife by living at her maternal home since September 2001 was by itself sufficient to constitute grounds under Section 13(1)(ia) and (ib) of the Act, 1955. It was also urged that the order granting permanent maintenance @ Rs.3000/- per month to the respondent/wife was perverse since no application under Section 25 of the Act was made by the respondent/wife.

8. No one appeared for the respondent at the time of final hearing.

9. Having considered the submissions of learned counsel for the appellant, I have perused the record. It is pertinent to note that the appellant herein did not produce the copy of the notice sent by him to the respondent to show that the appellant had asked the respondent to return to her matrimonial home and to restore marital life. The testimony of Gokul Prasad Basant was rightly discarded by the learned 1st Additional District Judge as highly contradictory to the testimony of the appellant. The appellant admitted that the respondent had sustained a fracture on her left leg in September 2001 and the father of the respondent had taken her to Bilaspur for treatment. However on 7.9.2001, he had again brought the respondent to his village Rampur for treatment and the respondent was living with her parents at Bilaspur from 9.9.2001. Learned trial Judge, on proper appreciation of the evidence adduced by the parties and by a well reasoned order, recorded a finding that in September 2001, the respondent had sustained fracture due to being pushed by the appellant and thereafter she went to her maternal home with her father and the appellant had thereafter made no efforts to bring her back. The learned

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trial Judge rightly placed reliance on the testimony of the respondent that the appellant had never made any effort to take her back to her matrimonial home since September 2001. The respondent had categorically stated that she wanted to live with her husband and had never misbehaved with him.

10. Having thus perused the impugned judgment dated 24th April 2004, I am of the considered opinion that the learned 1st Additional District Judge has, on proper appreciation of the evidence adduced by the parties, recorded a finding that the appellant/petitioner has failed to establish the grounds under Section 13(1)(ia) and (ib) of the Act, 1955. Facts of the case law, cited by the learned counsel for the appellant, are distinguishable and do not apply to the present case. The impugned judgment refusing to grant a decree of divorce between the parties is thus impeccable and does not call for any interference.

11. However, I find substance in the contention raised by the learned counsel for the appellant that so far the interim order for grant of maintenance *pendente lite* passed under Section 24 of the Act, 1955 is concerned, it was effective only during the pendency of the proceedings and no order for grant of permanent maintenance could be made in favour of the respondent-wife without there being an application under Section 25 of the Act. For grant of permanent maintenance, it was necessary for the respondent-wife to make an application under Section 25 of the Act. Since no application was made, the order granting permanent maintenance at the rate of Rs.3,000/- per month to the respondent/wife

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from the date of dismissal of the petition for divorce cannot be sustained under law.

12. In the result, the appeal is partly allowed. The dismissal of the petition for divorce under Sections 13(1)(ia) and (ib) of the Act, 1955, is affirmed. The order granting permanent maintenance of Rs.3,000/- per month to the respondent from the appellant herein is set aside.

Sd/-
Dilip RaoSaheb Deshmukh
Judge